

MS. Boyd



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Hercules Painting

File: B-223647

Date: July 31, 1986

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### DIGEST

1. Contracting officer has discretion not to conduct a preaward survey, and unless the protester shows possible fraud or bad faith on the part of such an official or the failure to apply definitive responsibility criteria General Accounting Office will not review a decision not to conduct a preaward survey.
2. There is no legal basis to object to a below-cost bid. Whether a bidder can meet contract requirements in light of its low bid is a matter of bidder responsibility, the affirmative determination of which is not reviewed by General Accounting Office except in circumstances not present in this case.

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### DECISION

Hercules Painting protests the award by the Navy of a painting and repair contract under solicitation No. N62474-86-B-5666 to any bidder other than Hercules. Hercules contends that the low and second low bidders are not responsible and that the contracting officer erred in not conducting a preaward survey to determine responsibility. In addition, Hercules maintains that the two lowest bids should not be accepted since they are below-cost bids that would make it impossible for the bidders to comply with the wage rate determinations applicable under the Davis-Bacon Act. We dismiss the protest.

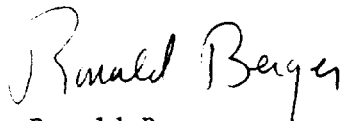
Before awarding a contract, the contracting officer must make an affirmative determination that the prospective awardee is a responsible contractor. See Federal Acquisition Regulation, 48 C.F.R. § 9.103(b) (1985). Preaward surveys are not a legal prerequisite to an affirmative determination of responsibility, however; contracting officials have broad discretion regarding whether to conduct surveys and may use other information available to them concerning a bidder's capability. Therefore, we will not review a decision not to conduct a preaward survey or a subsequent affirmative determination of responsibility unless a protester shows possible fraud or bad faith on the part of contracting officials or that definitive responsibility criteria in the solicitation have not been applied. Carolina Waste Systems, Inc., B-215689.3, Jan. 7, 1985, 85-1 CPD ¶ 22.

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Hercules' second allegation is that the two low bids were below-cost bids that would make it impossible for the bidders to meet their wage rate obligations under the Davis-Bacon Act. There is no legal basis on which to object to the submission or acceptance of a below-cost bid. K&P, Inc., B-219608, Aug. 1, 1985, 85-2 CPD ¶ 121. To the extent the protester challenges the other bidders' ability to perform at their bid prices, the protest concerns the agency's affirmative responsibility determination, a matter which, as noted above, we will review only in limited circumstances not alleged or evident here. Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1986); Seaton Van Lines, Inc., B-217298, Jan. 8, 1985, 85-1 CPD ¶ 26.

Finally, Hercules contends that since the two bids are significantly lower than its bid and the government estimate, the contracting officer is on notice of a possible mistake in the bids and therefore is required to request that the bidders verify their bids. The Navy has advised us that, pursuant to a request from the contracting officer, the low bidder has verified its bid.

The protest is dismissed.

A handwritten signature in cursive script, reading "Ronald Berger".

Ronald Berger  
Deputy Associate  
General Counsel